for possession of premises known as No. 204, Orchard Road (the premises).

It was not in dispute that the premises are controlled premises and that they were let to the first defendant sometime during the Japanese occupation.

The plaintiffs claimed possession against the first defendant under section 27(a) of the Control of Rent Act (Cap. 266) (the Act) on the ground that he was not in occupation of the premises and against the second and third defendants on the ground that they were unlawfully in occupation.

The first defendant consented to judgment on September 10, 1977. The trial then proceeded against the second and third defendants on the basis as claimed in the writ, i.e. that they were unlawfully in occupation. The second and third defendants denied that they were unlawfully in occupation.

The facts found by the learned District Judge on the evidence were these. Sometime in 1945, the second defendant, who was then a widow having lost her husband during the second World War, had approached the wife of the first defendant, who then held a tenancy of two premises at Orchard Road viz. the premises and another at No. 110-112 Orchard Road, and asked to be allowed to take over the tenancy of the premises. The wife of the first defendant agreed to this and the first defendant did not himself object to it. The first defendant then moved out of the premises and retained a connection with it in that the second defendant would hand the rent payable to him and he would tender this to the landlords. This went on for some period of time when the first defendant asked the second defendant to pay the rents direct to the landlords. The third defendant had come on to the premises in 1959 after he had married the second defendant's daughter. The first defendant was aware of the status of the third defendant and knew of his coming on the premises and had not objected to it. The learned District Judge also found that the plaintiffs had failed to determine the contractual tenancy of the first defendant before the present proceedings commenced.

On these facts the learned District Judge dismissed the plaintiffs' claim on the ground that the plaintiffs had not proved that the second and third defendants were unlawfully in occupation of the premises as they were in occupation of the premises with the leave and licence of the first defendant, and accordingly were not trespassers. It is this ruling that has given rise to the appeal.

On appeal by the plaintiffs to the High Court, the appellate judge dismissed the appeal. It appears from the judgment that he was not persuaded to interfere with the findings of the trial judge. Before us it was submitted on behalf of the plaintiffs that the finding of the trial judge that the second and third defendants were in occupation with the leave and licence of the first defendant amounted to a finding that they were in occupation as mere licensees and that, as licensees, they were not protected by the provisions of the Act.

On this submission it is necessary to consider the evidence before the trial court. It was common ground at the trial that the second defendant took possession of the premises from the first defendant in the year 1945. There was no evidence that the first defendant's tenancy was subject to a prohibition against assignment or sub-letting. The evidence of the second defendant, which was not challenged, was that when she went into possession, she knew the first defendant was the "chief tenant" and she rented the premises from him and paid him rent until 1968. From 1968 she paid the rent to the rent collector of the plaintiffs because the first defendant had asked her to pay the rent direct to the landlord as he was leaving the country. The rent receipts issued by the plaintiffs from 1968 onwards were made out in the name of the first defendant.

In our opinion, on these undisputed facts the only inference to be drawn was that the first defendant had sub-let the whole of the premises to the second defendant and that the first defendant was not prohibited under his contractual tenancy from sub-letting without the prior consent of the plaintiffs as his landlord. Accordingly, we were of the opinion that the relationship between the first defendant and the second defendant was that of landlord and tenant and not that of licensor and licensee. It follows that in law the second defendant had a tenancy of the premises from the date she entered into possession in 1945 and was a protected tenant by virtue of the Act when proceedings for possession were commenced against her.

For these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Tan Kim Seng & Neo.*

WONG PENG KIN & ORS. v. MELODIES LTD.

[C.A. (Wee Chong Jin C.J., D'Cotta & Rajah JJ.) September 1, 1980]

[Singapore — Civil Appeal No. 91 of 1979]

Land Law — Lease for 999,999 years — Building and common property management — Lessors required by authorities to repair retaining wall and divert sewer — Appeal against decision allowing lessors to claim contribution in payment from lessees — Local Government Integration Act (Cap. 210), s. 2(2) — Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951, by-law 14 — Buildings & Common Property (Management) Act, 1973, s. 4(1).

Property Management — Lease for 999,999 years — Lessors required by authorities to repair retaining wall and divert sewer — Whether lessors could claim contribution in payment from lessees — Environmental Public Health Act, 1968, s. 51(1) — Local Government Integration Act (Cap. 210), s. 2(2) — Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951, by-law 14 — Buildings and Common Property (Maintenance & Management) Act, 1973, s. 4(1).

In Suit No. 3386 of 1976, Chua J. (see [1980] 1 M.L.J. 272) allowed the plaintiffs' claim for payment of maintenance fees and increase in rental. This was an appeal by the defendants.

The facts of the case are briefly as follows. The plaintiffs in this case were owners of the land and premises

situated at Pasir Panjang Road and Pasir Panjang Hill on which the plaintiffs had erected four blocks of flats. The defendants were the lessees for a term of 999,999 years of the said flat units.

Sometime in early December 1969, due to heavy rain, the drain and retaining wall by the side of No. 43D Pasir Panjang Hill collapsed. The plaintiffs consulted their architects. On December 15, 1969, the plaintiffs wrote to the defendants that measures had to be taken immediately to protect the property in the estate. The plaintiffs suggested that a new wall be erected and that it would cost about $32,000. They requested a contribution of $1,000 immediately from each of the defendants. The response from the defendants was poor and the plaintiffs were unable to proceed with the works. In June 1970 the plaintiffs received a Notice under section 51(1) of the Environmental Public Health Act 1968 from the Chief Building Surveyor requiring the plaintiffs, *inter alia*, to erect proper and sufficient shoring to prevent landslides and collapse of the retaining wall.

Between December 1970 and July 1973 the plaintiffs endeavoured to obtain some kind of agreement with the defendants with regard to the works to be done under the said Notice but were unable to do so.

In August 1973 the plaintiffs were served with a Notice under section 2(2) of the Local Government Integration Act (Cap. 210) and by-law 14 of the Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951 by the Public Works Department requiring the plaintiffs to divert the sewer lines in the Estate to connect to the Government sewer. Several discussions were held with the proper authorities about the building of the retaining wall, approval to which was finally given. In May 1974 the plaintiffs invited tenders for the erection and completion of the retaining wall, and diversion of sewer from the sewerage treatment plant to connect to the public sewer together with ancillary works.

On September 16, 1974, the plaintiffs wrote to the defendants informing them that "due to the increased cost in the maintenance of the above property we regret we have to exercise our rights under clause 6 of the Lease to increase the rent (maintenance fee) to $15 per flat per month with effect from April 1, 1975."

Held: (1) the trial judge was entitled on the evidence before him to find that the plaintiffs had justified their proposed increase;

(2) the plaintiffs were not, however, entitled to increase the rent from April 1, 1975. The said letter of September 16, 1974 was effective to increase the yearly rent only from January 1, 1976. The amounts due by the defendants in respect of unpaid rents must be reduced accordingly;

(3) the costs of the sewer extension work was not incurred by the plaintiffs voluntarily but as a direct result of a notice served under the provision of the Local Government Integration Act (Cap. 210). Such costs were an outgoing on the Estate within the meaning of clause 2(b) of the leases and therefore payable by the defendants.

Case referred to:-

(1) *Harris & Anor.* v. *Hickman* [1904] 1 K.B. 13.

CIVIL APPEAL.

S.K. Chan for the appellants/defendants.

C.S. Wu for the respondents/plaintiffs.

Cur. Adv. Vult.

Rajah J. (delivering the judgment of the Court): This is an appeal from the judgment of Mr. Justice Chua in a Suit wherein the plaintiffs (respondents) sued each of the defendants (appellants) for work done by the plaintiffs, maintenance fees and increase of rental which were payable under leases (in standard form) executed by each of the defendants and the plaintiffs.

The plaintiffs claimed from each of the defendants a *pro rata* contribution of $5,938.54, being 1/32 share for the lessee of each flat unit, based on the sum of $190,033.36, made up as to $172,757.60 being the total expenditure alleged to have been incurred by them for sewer diversion, earth embankment works and car park repairs and maintenance under clause 4(c) of the lease, and as to the balance of $17,275.76 being the 10% chargeable on the said $172,757.60 under clause 2(f) of the lease. And alternatively, the plaintiffs claimed a *pro rata* contribution of $5,408.18, being 1/32 share for the lessee of each flat unit, based on the sum of $173,061.60, made up as to $169,717 being the total expenditure alleged to have been incurred by them for sewer diversion and earth embankment works under clause 2(b) of the lease, as to $3,040.60 being for car park repairs and maintenance under clauses 2(e) and 2(f) of the lease and as to the balance of $304 being the 10% chargeable on the said $3,040.60 under clause 2(f) of the lease.

The plaintiffs further claimed that under clause 1 of the lease each of the defendants was liable to pay an annual rent of $60 per annum in advance on the first day of January in every year and that by clause 6 the plaintiffs were entitled to increase the said rent. They claimed to have given the required notice in writing under the said clause 6 of the increase of the rent to $15 per month per flat with effect from April 1, 1975. The plaintiffs said that thirteen of the defendants had failed to pay the said increase of rent and they claimed from each of them the increased rental.

In addition the plaintiffs claimed against a number of the defendants miscellaneous sums (particularised in the amended statement of claim) due under the leases.

A recital in the lease and the clauses therein material to the determination of the appeal are set out hereunder: —

"WHEREAS:

1. The company is seized of the land and premises situate at Pasir Panjang Road and Pasir Panjang Hill in the District of Pasir Panjang in the Island of Singapore being the land marked on the Government Resurvey Map as Lot 89-44 of Mukim III and on which the company has erected four blocks of Flats (hereinafter together referred to as 'the Estate').

Clause 1. In pursuance of the said agreement and in consideration of the sum of Dollar:

....

To hold the flat hereby demised unto the purchaser from the 1st day of January 1963 the term of 999,999 YIELDING and PAYING therefor during the said term the yearly rent of Dollars sixty ($60) free from all deductions payable in advance on the 1st day of January in every year.

Clause 2. The purchaser hereby covenants with the company as follows:—

(b) To pay all rates taxes assessments charges impositions and outgoings which may at any time during the term hereby granted be assessed charged or imposed upon the flat or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the Estate or any part thereof to pay the proper proportion of such rates taxes assessments charges impositions and outgoings attributable to the flat.

(f) Forthwith on demand to repay all reasonable expenses (plus 10%) incurred by the company in executing any repairs or work under sub-clause (e) of this clause and sub-clause (c) of Clause 4 including such repairs or work ought to have been done by the purchaser in accordance

with sub-clause (a) of Clause 3 and in case of any difference as to the amount of such expenses attributable to repairs or work within this sub-clause such difference shall be referred to arbitration in accordance with Clause 8 hereinafter contained.

Clause 4. The company hereby covenants with the purchaser as follows:—

(c) That the company will maintain repair redecorate and renew (i) the main structure and in particular the roof gutters and rain-water pipes of the Estate (ii) the gas and water pipes drains, sewer lines and septic tank and electric cables and wires in under and upon the Estate and enjoyed or used by the purchaser in common with the owners and lessees of the other Flats (iii) the main entrances passages landings and staircases of the building of which the flat forms part so enjoyed or used by the purchaser in common as aforesaid and the paths and roadways leading thereto (iv) the car park enjoyed or used by the purchaser in common as aforesaid.

Clause 6. Provided further and it is hereby agreed that if the rent herein before reserved shall at any time amount to less than 110% of the total cost to the company of carrying out the covenants on its part more particularly set out in Clause 4 hereof the company shall be entitled upon giving not less than six months notice in writing to increase the said rent provided that the said rent after such increase shall not exceed 140% of such cost as aforesaid and provided also that no such revision shall take place until the expiration of five years from the date hereof and thereafter shall not take place more often than once in every period of five years."

The defendants' defence was that they were not liable to contribute to the alleged expenditures on a *pro rata* basis or on any other basis under the terms of the lease and if they were so liable the expenses were excessive and/or unreasonable. With regard to the said miscellaneous sums the defendants admitted liability but they disputed the right of the plaintiffs to raise the rental from $60 per annum to $180 per annum effective from April 1, 1975.

Sometime early in December 1969, due to heavy rain for a few days, the drain and retaining wall by the side of flat No. 43D Pasir Panjang Hill collapsed. The plaintiffs consulted their architects. On December 15, 1969, the plaintiffs wrote to the defendants informing them of this fact and (1) stating that measures had to be taken immediately to protect the property in the Estate, (2) suggesting that a new retaining wall be erected, (3) that the costs of such measures would amount to about $32,000 and (4) requesting a contribution of $1,000 immediately from each of the defendants. The plaintiffs received very poor response from the defendants and so were unable to proceed with the works. In February 1970, a reminder was sent to the defendants.

In June 1970 the plaintiffs received a Notice under section 51(1) of the Environmental Public Health Act, 1968, from the Chief Building Surveyor calling upon them to abate a nuisance on the Estate and requiring the plaintiffs: —

(i) to erect proper and sufficient shoring to prevent landslides and collapse of retaining wall;

(ii) to repair and reconstruct the defective surface drains at front of premises and near the car park;

(iii) to submit building plans through a Registered Architect for the reconstruction and/or erection of a proper reinforced concrete retaining wall;

(iv) to erect or reconstruct the said Reinforced Concrete Retaining wall immediately after the approval of the Building Plan.

Between December 1970 and July 1973 the plaintiffs endeavoured to obtain some kind of agreement with the defendants with regard to the works to be done under the said Notice but were unable to do so.

In August 1973 the plaintiffs were served with another Notice this time under section 2(2) of the Local Government Integration Act (Cap. 210) and By-Law 14 of the Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951 by the Public Works Department requiring the plaintiffs to divert the sewer lines in the Estate to connect to the Government Sewer.

The plaintiffs thereupon discussed with the proper authorities the building of the retaining wall, and approval was eventually given by the proper authorities for the building of an earth embankment and the construction of a retaining wall of about 10 feet. The plaintiffs then through their architects invited tenders in May 1974 for (1) the erection and completion of a reinforced concrete retaining wall and (2) the diversion of the sewer from the sewerage treatment plant to connect to the public sewer together with ancillary works. Eventually the tender of Tai Kheng Private Ltd. (Tai Kheng) for $99,500 for sewer diversion was accepted. The plaintiffs also asked Tai Kheng to do the earth embankment with close turfing and level the car park and repair the drains for $65,900. The plaintiffs had to proceed with the earth embankment work or face prosecution as the matter had been delayed since 1969 and they had been served with a number of Notices from the Commissioner of Buildings under section 4(1) of the Buildings and Common Property (Maintenance & Management) Act 1973. Similarly, the plaintiffs also faced prosecution if they failed to carry out the sewer diversion. The resurfacing of the car park was done by Guan Chwee Construction for $3,040.60 in 1975.

On September 16, 1974, the plaintiffs wrote to the defendants informing them that "due to the increased cost in the maintenance of the above property we regret we have to exercise our right under clause 6 of the lease to increase the rent (maintenance fee) to $15 per flat per month with effect from April 1, 1975".

The learned trial judge after a lengthy hearing rejected the defence of the defendants and held that the plaintiffs had proved their claim and he adjudged that all the defendants do pay the following sums due to the plaintiffs.

"A. Under clause 2(b) of the leases:	
(i) Sewer diversion	$99,500.00
(ii) Surveying & Demarcation fee	180.00
(iii) Plan fee	12.00
(iv) Engineers' Professional fees	4,125.00
B. Under clause 4(c) of the leases:	
(i) Earth embankment with close turfing	65,900.00
(ii) Car park repairs and maintenance	3,040.60
C. 10% under clause 2(f) and the leases ($65,000 + $3,040.60)	6,894.06
D. Increase of rent as shown in paragraph 2 of the Amended Statement of Claim	2,985.60
	$182,637.26"

Against this judgment the defendants have appealed and at the hearing of the appeal their counsel made four submissions which were: —

(1) That the letter of September 16, 1974 was not a valid notice under clause 6 of the lease;

(2) That the cost of, and incidental to the diversion of the sewer did not constitute a charge imposition or outgoing, charged or imposed on the plaintiffs, under clause 2(b) of the lease and so not recoverable from the defendants;

(3) That in the alternative the cost of the diversion of the sewer was excessive and unreasonable in the circumstances;

(4) That the cost of the earth embankment and close turfing work was excessive and unreasonable in the circumstances.

Issue No. 1 — Increase in annual rent, clauses 1 and 6 of the leases.

The submission is that by virtue of clauses 1 and 6 of the lease the plaintiffs' letter of September 16, 1974 could only effectively increase the yearly rent, which is payable in advance at the beginning of every calendar year from January 1, 1976. It is also submitted that in any event the trial judge was wrong in finding that the proposed increased annual rent of $180 did not exceed 140% of the total cost to the plaintiffs of carrying out its covenants under clause 4 of the lease.

In our judgment the trial judge was entitled on the evidence before him to find that the plaintiffs have justified their proposed increase but, having regard to the terms of clause 1, we are of the opinion that the plaintiffs were not entitled to increase the rent from April 1, 1975. However, in our opinion, the letter of September 16, 1974 was effective to increase the yearly rent only from January 1, 1976. The amounts due by the defendants in respect of unpaid rents must be reduced accordingly.

Issue No. 2 — Cost of Sewer Diversion, Construction of clause 2(b) of the leases.

Learned counsel contended that the plaintiffs were obliged to do the sewer diversion works by virtue of the undertaking given in 1961 by the plaintiffs to the City Council before the building of the flats or the grant of the leases to the defendants and that therefore the cost of and incidental to such works could not constitute a charge, imposition or outgoing, charged or imposed on the plaintiffs, under clause 2(b) of the leases and that it, therefore, followed that such costs were not recoverable from the defendants.

We are of the view that a correct reading of clause 2(b), in itself, provides the solution to the problem. It should be noted that this clause is in two parts and that between these two parts they cover all the rates taxes, assessments charges impositions and outgoings on both "the Flats" and "the Estate". The first part is for the defendants "to pay all rates taxes assessments charges impositions and outgoings which may at any time during the term hereby granted be assessed charged or imposed upon the *Flat* (italics ours) or the owner or occupier in respect thereof" and the second part is also for the defendants, "in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the *Estate* (italics ours) or any part thereof to pay the proper proportion of such rates taxes assessments charges impositions and outgoings attributable to the Flat". It will be noticed that the first part deals specifically with the Flat or the owner or occupier in respect thereof and the second part specifically deals with the Estate as opposed to the Flat and also that the expression "the Estate" in clause 2(b) refers to the land on which the block of flats had been built and of which the plaintiffs are the owners (Recital No. 1 of the Lease).

In our opinion clause 2(b) makes it quite plain that where there are impositions or outgoings on the land on which the block of flats are erected each of the owners of the flats have categorically covenanted to pay the proper proportion of such outgoings or impositions attributable to the Flat or the owner thereof in respect of the land. The costs of the sewer extension work were not incurred by the plaintiffs voluntarily but as a direct result of a notice served under the provisions of the Local Government Integration Act (Cap. 210). This being so it is our view that such costs are an outgoing on the *Estate* within the meaning of clause 2(b) of the leases — *Harris & Anor.* v. *Hickman.*[1] We are of the view that the learned trial judge correctly decided that the defendants were liable to pay the cost of the sewer extension work under clause 2(b) of the leases.

Issue No. 3 — Costs of Sewer diversion. Whether amount charged reasonable.

Issue No. 4 — Costs of the earth embankment. Whether amount charged reasonable.

These two issues are questions of fact on which the learned trial judge after hearing all the witnesses and weighing all the evidence before him came to the conclusion that the amounts charged were neither excessive nor unreasonable in the circumstances. Nothing was advanced by the appellants to induce us to interfere in any way with the findings of the learned trial judge on these issues.

Accordingly, except in respect of the claim for increased rent for the period April 1, 1975 to December 31, 1975, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shook Lin & Bok; Donaldson & Burkinshaw.*